IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

RCRev..No. 214 of 2007
---

RCA.83/2005 of RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM
RCP.138/2003 of RENT CONTROL COURT, ERNAKULAM

.....

REVN. PETITIONER:

RAFEEQUE T.BAWA, S/O. SULAIMAN BAWA,
M/S. CANON TRADERS, 9/348, VIJAYA BANK BUILDING,
NETTOOR-682 304, NOW RESIDING AT HOUSE NO.5/450A,
KOCHUVELIKAVALA, ERAMALLOOR P.O., ALLEPPEY.

BY ADV. SRI.A.K.SESHADRI

RESPONDENTS:

1. SHESHU JOHN, S/O. T.I.JOHN,11 B,
SKYLINE APARTMENTS, JAWAHAR NAGAR,
KADAVANTHRA, COCHIN.

2. PETER JOHN, S/O. T.I.JOHN, DO. DO.

3. NAZEERA MAJEED, D/O. SULAIMAN BAVA,
KUNNUMPURAM, FORT KOCHI-682 001.

4. DR. SHAHEER T. BAVA, S/O. SULAIMAN BAVA,
EYE SPECIALIST, THERUVATH HOUSE, CANARA BANK,
KUNNUMPURAM, FORT KOCHI-682 001.

5. NAZEER T.BAVA, S/O. SULAIMAN BAVA,
3/1482, THERUVATH HOUSE, NICOR ENTERPRISES,
MASS ROAD, MATTANCHERRY, KOCHI-2.

6. SHANE T.RAFEEQUE, S/O. RAFEEQUE T.BAVA,
THERUVATH HOUSE, GEMS ENTERPRISES,
DHORAISWAMY IYER ROAD, KOCHI-35.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

---

R.C.R.No. 214 of 2007

---

**ORDER**

Balachandran, J.

The first counter petitioner in R.C.P.No.138/03 on the file of the Rent Control Court, Ernakulam is the revision petitioner. He challenges in this revision the concurrent order of eviction passed against him under Section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act').

2. Respondents 1 and 2 filed RCP aforesaid against the petitioner and respondents 3 to 6 for an order of eviction under Section 11(2)(b) of the Act, inter alia, on the allegation that they obtained the scheduled shop room as per the registered will executed by their grandmother Saramma Ittoop; that the scheduled shop room was let out to the petitioner and his father as per the lease deed executed in the year 1964 on a monthly

rental of Rs.300/-, which was subsequently enhanced to Rs.325/- per month and that rents at that rate is continuously in arrears with effect from December 1988. The petitioner and his son, who is the sixth respondent, denied title of respondents 1 and 2 as landlords over the scheduled shop room on the ground that the details of the property bequeathed to respondents 1 and 2 are not contained in the will; that there is variation in the survey number; that the will is not probated and that, therefore, there is bona fide denial of title of respondents 1 and 2 over the scheduled shop room. After the death of Saramma Ittoop her son John, who is the father of respondents 1 and 2, used to receive the rents and he was not in the habit of issuing receipts. They further contended that rents were being paid regularly till receipt of statutory notice. The contention raised by the tenants were repelled and eviction was ordered by the Rent Control Court under Section 11(2)(b) of the Act.

3. The petitioner herein filed R.C.A.No.83/05 and the sixth respondent filed R.C.A.No.74/05 before the Rent Control Appellate Authority, Ernakulam challenging the said order of eviction. Both the appeals were dismissed by the appellate authority concurring with the findings of the Rent Control Court.

4. It is contended before us by the learned counsel for the petitioner that as long as the will is not probated, respondents 1 and 2 cannot claim exclusive right and that there may be other children to the original landlord Saramma Ittoop and also to her son John and hence the authorities below went wrong in allowing the petition for eviction on the application of respondents 1 and 2. The contesting tenants admitted that the landlord was Saramma Ittoop, the paternal grandmother of respondents 1 and 2. According to them, they accepted Sri.John, son of Saramma Ittoop, as the landlord and rents were being paid to him till

receipt of statutory notice issued on behalf of respondents 1 and 2. The above contention shows that on the death of Saramma Ittoop, father of respondents 1 and 2, was being accepted by the contesting tenants as the landlord. Hence, in any event, the dispute on the claim advanced by respondents 1 and 2, who are admittedly the children of Sri.John, to the scheduled shop room is not a bona fide dispute, as it cannot be denied that even in the absence of a will, respondents 1 and 2 have right, at least as co-owners and that cannot be disputed by the contesting tenants, including the petitioner.

5. It is further contended before us by the learned counsel for the petitioner that payment of rents to Sri.John, after the death of Saramma Ittoop, should have been accepted by the authorities below, as there is no case for respondents 1 and 2 that during the life time of Saramma Ittoop, the tenants had committed any

default in payment of rents. The said contention also is devoid of merit, as the burden to prove and establish discharge by payment of rents is on the petitioner and that burden had not been discharged. It is also contended that there is incorrectness in the amount of arrears, calculated by the appellate authority. That is a finding of fact by the court below on evidence and this revision does not deserve to be admitted on that score, as it is not a matter on which the revisional jurisdiction can be exercised.

This revision, in the circumstances, is devoid of merit and is dismissed.

(J.B.Koshy, Judge)

10th July, 2007

(K.P.Balachandran, Judge)

tkv